

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JAMES BENBOW,

Plaintiff,

-against- Civ. No.: 17-CV-6457 (EK) (LB)

CITY OF NEW YORK; POLICE OFFICER BRIAN W.
FEELY; POLICE OFFICER MATTHEW J. ROSIELLO;
POLICE OFFICER KENNETH L. ANDERSON; SERGEANT
WILLIAM A. DAIB; POLICE OFFICER SHANIEL J.
MITCHELL; and POLICE OFFICER STEPHEN J. MINUCCI,

Defendants.

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VIDEO CONFERENCE VIA ZOOM
Conducted by:
LEX REPORTING SERVICE
160 Broadway
New York, New York

October 9, 2020
2:02 p.m.

DEPOSITION of POLICE OFFICER KENNETH L.

ANDERSON, a Defendant in the above-entitled
action, held remotely via Zoom videoconference,
pursuant to Order, taken before Tania C.
Pedrosa, a shorthand reporter and Notary Public
within and for the State of New York.



LEX#159554

TOLL FREE 800.608.6085

A p p e a r a n c e s :

THE ABOUSHI LAW FIRM, PLLC
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BY: JOSHUA A. WEINER, ESQ.
FILE No.: 2017-066702

S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED
by and between the attorneys for the
respective parties herein, that filing,
sealing and certification be and the
same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED
that all objections, except as to the
form of the question shall be reserved
to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED
that the within deposition may be signed
and sworn to before any officer
authorized to administer an oath, with
the same force and effect as if signed
and sworn to before the Court.

THE REPORTER: This deposition is being conducted via Zoom videoconferencing. All parties present are appearing remotely and are confirming that they can hear and see through the video without any technical issues.

Would counsel and the witness please confirm.

MR. ABOUSHI: Confirmed.

MR. WEINER: Confirmed.

THE WITNESS: Confirmed.

THE REPORTER: Before I swear in the witness, I will ask counsel to stipulate on the record that due to the national emergency pandemic, the court reporter may swear in the deponent even though they are not in the physical presence of the deponent, and that there is no objection to that at this time, nor will there be an objection to

it at a future date.

MR. WEINER: Confirmed.

MR. ABOUSHI: Confirmed.

THE REPORTER: And, Counsel,
can you represent that to the
best of your knowledge and
belief, the witness appearing
today via videoconference is
indeed Kenneth Anderson?

MR. WEINER: To my
knowledge, yes.

K E N N E T H L. A N D E R S O N, the
witness herein via videoconference,
having first been duly sworn by a
Notary Public of the State of New York,
was examined and testified as follows:

EXAMINATION BY

MR. ABOUSHI:

Q State your name for the record,
please.

A Kenneth L. Anderson.

Q State your address for the
record, please.

MR. WEINER: Just give them

1 K. L. Anderson 83

2 one who had direct contact with Marshall --

3 Q Marshall.

4 A -- that night.

5 Q So the answer to my question is
6 it's correct, you did not have any direct
7 contact --

8 A No, I did not have any direct
9 contact with him.

10 Q What car did you take to the
11 scene that night?

12 A I was in a Crown Vic, unmarked.
13 It was black.

14 Q Was it --

15 A You need the exact number?

16 Q Yes.

17 A I would have to look at my memo
18 book for a second to refresh my memory. Is
19 that all right?

20 Q Is it 649?

21 A It is --

22 Q Or six --

23 A -- 649. 649 -- it was either six
24 -- yeah, 649. And I started the night in
25 another car, but yes.

1 K. L. Anderson 84

2 Q 649, a lucky guess by my part.

3 A You have the notes.

4 Q Maybe, maybe not.

5 So in terms of 649, that's a
6 black Crown Vic, correct?

7 A Unmarked Crown Vic, correct.

8 Q Okay. When you say "unmarked,"
9 was it completely unmarked, was it made to
10 look like an Uber, was it made to look like a
11 livery or just no markings whatsoever?

12 A Well, in 2017 I don't know if
13 Uber was even around yet. But it was a black
14 unmarked Crown Vic with no -- no --
15 everything was subdued, like the light
16 package and everything, so it looks like --
17 more like a livery cab than an Uber.

18 Q Okay. Do you know if it had that
19 orange light in the front -- in the back like
20 livery cabs do?

21 A No.

22 Q The car that Sergeant Diab and
23 them were in, what kind of car was that?

24 A That was a Ford Fusion.

25 Q Okay. Marked? Unmarked?

1 K. L. Anderson 91

2 A -- they're initiating the stop.
3 They're trying -- like, for the most part,
4 they're supposed to be handling the stop.

5 Q Okay. And so you testified that
6 you got out from the passenger's side and you
7 made your way to the sidewalk; is that
8 correct?

9 A Correct.

10 Q Okay. And how about Rosiello,
11 did he do the same?

12 A He exited and was on the sidewalk
13 as well with -- with myself.

14 Q Okay. And where was Feeley?

15 A He was still in the street.

16 Q Okay. Like, in the middle of the
17 street or by the car door where he was
18 driving -- the driver's door?

19 A Well, it's not a real -- it's --
20 like, the street is pretty wide so there's --
21 it's, like, an arrow breakdown in the middle
22 and then there's -- it's like -- almost,
23 like, two lanes so he's on, like, the inner
24 part closer to the sidewalk but he's more
25 directly in the center of the street, I

1 K. L. Anderson 94

2 know exactly where. He's somewhere on the
3 driver's -- driver's side of that vehicle in
4 front of me.

5 Q Okay. A few steps in front of
6 you more or less?

7 A Correct.

8 Q And at some point you see
9 Mr. Benbow running in your direction,
10 correct?

11 A Correct.

12 Q Okay. And at some point
13 Mr. Benbow then cuts in between two cars,
14 essentially makes a right, correct?

15 A Correct.

16 Q Okay. And he makes a right
17 towards -- in between two cars towards the
18 middle of the street; is that accurate?

19 A Correct.

20 Q Okay. And at that point you and
21 Rosiello are essentially right next to each
22 other on the sidewalk, correct?

23 MR. WEINER: Objection.

24 You can answer.

25 A Not right in front. He's -- he's

1 K. L. Anderson 95

2 still in front of me.

3 Q Okay. Rosiello is how far in
4 front of you?

5 A A few -- a few steps.

6 Q Okay.

7 A Probably like five -- five or six
8 steps.

9 Q Okay. And are you directly in
10 front of each other or are you staggered?

11 A A little bit staggered but let's
12 just say our statures aren't the same. I'm a
13 little bit more thin and slim. He's a little
14 -- a little bit more big-boned.

15 Q Okay. And then you all are on
16 the sidewalk. And as Mr. Benbow is running
17 down the sidewalk, Officer Feeley is still --

18 A In the street.

19 Q -- where he was next to the car
20 or the -- I was going to say the RMP but next
21 to the Crown Vic, correct?

22 A Yeah. He's somewhere in the
23 street.

24 Q Okay. And Mr. Benbow then makes
25 a -- as he's coming towards you, he then

1 K. L. Anderson 98

2 between the two cars and was at the end of
3 that --

4 A Correct.

5 Q -- towards the street, correct?

6 A Correct.

7 Q And Officer Rosiello fired his
8 weapon, correct?

9 A Correct, one shot.

10 Q Okay. At the time that Officer
11 Rosiello fired his gun, did Mr. Benbow point
12 any weapons at you?

13 A Mr. Benbow was running with a
14 firearm in his hand -- in his right hand.

15 Q Okay. Yeah. My question is --

16 MR. WEINER: Wait. Can you
17 --

18 Q -- more specific --

19 MR. WEINER: -- let him
20 answer -- let him finish his --

21 Q Oh, were you -- were you done?

22 A I'm going to -- I'm going to
23 explain it. I'm going to explain it. So --

24 Q Because I need you to just focus
25 on my question. Your attorney can ask you

1 K. L. Anderson 106

2 A Correct.

3 Q Okay. Did you ever train your
4 weapon on Mr. Benbow?

5 A Rephrase it.

6 Q Yeah. Did you ever train your
7 weapon on Mr. Benbow?

8 A Train my weapon?

9 MR. WEINER: Yeah.

10 Q Aim your weapon at Mr. Benbow.

11 MR. WEINER: Thank you.

12 A Okay. Aim my weapon, yes.

13 Q Okay. At what point did you aim
14 your weapon at Mr. Benbow?

15 A When I could see that there was a
16 firearm in his hand.

17 Q At what point -- okay. Was that
18 when he was running down the sidewalk?

19 A Yeah -- well, he had turned so
20 probably halfway since -- from running from
21 where he started from --

22 Q Okay.

23 A -- when I knew for -- for sure it
24 was a firearm in his hand.

25 Q Okay. So about half the distance

1 K. L. Anderson 107

2 between where you were and where he started
3 running, you realized, as you testified to,
4 right, he had a weapon in his hand?

5 A Correct.

6 Q Okay. And at that point you
7 aimed your weapon at him, correct?

8 A Correct.

9 Q And you didn't fire at him,
10 correct?

11 A Correct.

12 Q Okay. And he then broke in
13 between two cars, correct?

14 A Correct.

15 Q And when he first broke in
16 between two cars, you didn't fire at that
17 point, correct?

18 A Rephrase that one more time. I'm
19 sorry.

20 Q Sure. When he was running down
21 the sidewalk, he at some point made that
22 right in between two cars, correct?

23 A Correct.

24 Q When he first made that right to
25 get in between the two cars to head towards

1 K. L. Anderson 108

2 the street, you didn't fire at that point,
3 correct?

4 A No. My line of fire was
5 obstructed by the other officer.

6 Q By who?

7 A Officer Rosiello.

8 Q Okay. And could your line of
9 fire be unobscured if you took a step to the
10 right or to the left?

11 A That's -- you're -- you're
12 playing a very -- it's a hypothetical
13 question and I wouldn't -- I would have to --
14 I wouldn't say I would fire necessarily.
15 Because at the end of the day, he's -- you're
16 still firing at something that's moving so
17 you can't predict where his movement is going
18 to be in regards to where the other officer
19 was in front of me. So if my -- if my line
20 of fire is obstructed, I'm going to assume he
21 has a better line of fire. So that's why
22 there was no shot fired by me.

23 Q Now, where was Officer Rosiello
24 in relationship to you when he fired his gun?

25 A He's a little bit closer to the

1 K. L. Anderson 109

2 street but he's probably, like, 3 or 4 feet
3 in front of me.

4 Q Okay. Is he more to the left or
5 to the right side of you?

6 A So if I'm standing -- if I'm
7 standing on the sidewalk, the wall is on my
8 right-hand side and he's closer to the street
9 side.

10 Q He's closer to the street side?

11 A Correct.

12 Q So it's the street, correct,
13 Officer Rosiello, correct, and then to
14 Officer Rosiello's right is you, and then
15 there's a wall to your right, correct?

16 A Correct.

17 Q Okay. So you could see what was
18 going on, correct?

19 A Correct.

20 Q Okay. And you could look over
21 and see where Officer Feeley was, correct?

22 A I didn't see Feeley.

23 Q Okay. Why not?

24 A I'm focusing on the gentleman
25 running at me and where he's going. I'm not

1 K. L. Anderson 122

2 A Nothing --

3 Q Mr. Bradley.

4 A Nothing of substance that I
5 remember.

6 Q Okay.

7 A At some point he did mention he
8 had weed, though, in his bag. But other than
9 that, nothing of substance that I recall from
10 that day.

11 Q He just casually mentioned it to
12 you, like "I got weed in my bag"?

13 MR. WEINER: Objection.

14 A He was like -- I think -- he was
15 like, "I just got some weed. I just got some
16 weed." And his hands were, you know, still
17 up when I'm trying to secure him.

18 Q At some point you holstered your
19 weapon, correct?

20 A Correct.

21 Q Okay. At what point did you
22 holster your weapon?

23 A When the gun goes flying out of
24 Mr. Benbow's hand. He gets shot the -- the
25 final shot, he's falling to the ground, and

1 K. L. Anderson 123

2 you see the gun travel in the air and land.

3 Q Okay. And in terms of where you
4 say Mr. Benbow was holding the gun, is it
5 accurate to describe it like high and tight,
6 like almost like a football running with it
7 by the armpit?

8 A More like a track runner with a
9 baton so it's a little bit -- it's more
10 loose.

11 Q Okay. Now, before your
12 deposition here today, did you speak with any
13 union representative about this case and
14 about your deposition?

15 A A union rep, no.

16 Q Yeah.

17 A No.

18 Q Did you ever try to stop Officer
19 Feeley from firing his weapon?

20 A No.

21 Q Did you ever try to stop Officer
22 Rosiello from firing his weapon?

23 A No.

24 Q Did you ever tell anyone that you
25 tried to stop Officer Rosiello from firing

1 K. L. Anderson 139

2 A -- were followed by.

3 Q Okay. So between the -- between
4 the time when Officer Feeley began -- fired
5 his first shot and the time that Officer
6 Rosiello fired -- fired his first and only
7 shot, could you approximate the amount of
8 time between those two -- those two events?

9 MR. ABOUSHI: Objection.

10 A Two seconds, three seconds.

11 Q All right. You mentioned -- you
12 mentioned that you observed Mr. Bradley with
13 a -- with a bag?

14 A Correct.

15 Q Okay. Did you ever look inside
16 of that bag?

17 A Yes, later on at the 84 Precinct.

18 Q Okay. And why did you -- why did
19 you -- why were you looking inside the bag?

20 A Because it reeked of marijuana.

21 Q Okay. And what did you -- what
22 did you observe -- what, if anything, did you
23 observe inside the bag?

24 A He had a large quantity of
25 marijuana inside the bag.